

ORIGINAL

WT DOCKET 97-82;
EX PARTE

EX PARTE FILED

March 18, 1998

RECEIVED

MAR 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Chairman William Kennard
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
The Honorable Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman and Commissioners:

We represent a group of small businesses and entrepreneurial companies that are committed to C-block competition and that appreciate the efforts you have devoted to C-block issues. Several of us have been working with you and your staffs to develop commercially reasonable means of financing C-block network build outs. Unfortunately, it is our understanding that the Commission is still contemplating assessing penalties on C-block licensees of a minimum of 30% of their down payments, and in certain instances 100%. That amounts to hundreds of millions of dollars of penalties on a group of small businesses who were encouraged to bid in the C-block auction by the FCC and the U.S. Congress. We write to inform you that such penalties will severely undercut the ability of C-block companies to access capital markets, deploy networks, and bring competition and choice to wireless consumers.

It has been reported that such penalties are being assessed in the name of "auction integrity." Such a rationale stands in puzzling contrast to a story in yesterday's *Wall Street Journal*, which states that the Commission has issued a Notice of Apparent Liability for \$1.2 million against two incumbent wireless carriers for what appears to be a well documented attempt by those companies to fix prices in the DEF-block auction. While we applaud the Commission's efforts to ensure fair auctions, we do not comprehend the fairness of penalizing small entrepreneurs more than 250 times more severely than companies accused of price fixing.


C-block companies want nothing more than a reasonable chance to compete. We believe Commission penalties should be rationally related to the nature and degree of the offenses committed by the parties being penalized. Penalties of the magnitude currently contemplated by the Commission are without precedent in your history, and are at odds with the Commission's established precedent involving a C-block licensee that defaulted on its second down payment.

0+2

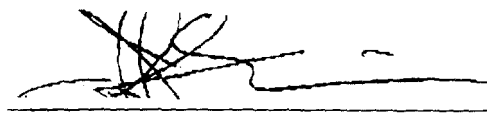
In that instance, the Commission penalized the licensee in question 2.5% of its down payment.


We appreciate the time and the effort the Commission and its staff have devoted to C-block issues. We respectfully request that any penalties imposed on C-block licensees be consistent with Commission precedent.


Sincerely,

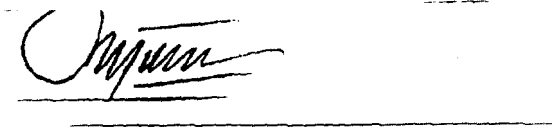

Janice Obuchowski
NextWave Telecom Inc.

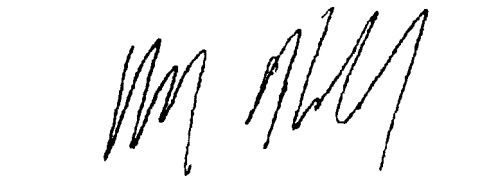

Rhonda McKenzie
McKenzie Telecom Group, Inc.

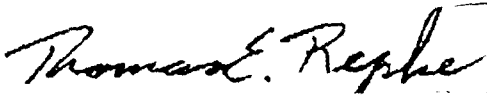

Jeffrey Elkins
CalTech International Telecom


Dr. Arturo Serrano
Praxis Telecom


Enrique Mier y Teran
LatinTel, S.A.


Juan Manuel Martinez
Intertel Inc.


Rick Kornfeld
Dot Wireless, Inc.



Thomas E. Repke
One Stop Wireless of America, Inc.



Cynthia R. Bailey
CX Systems Int'l, Inc.



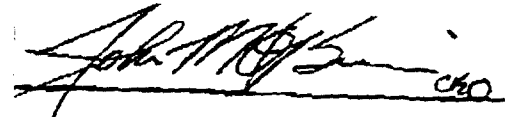
Pedro Martin
Ceicer, SA DE CV



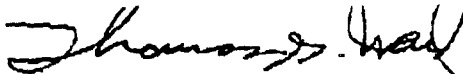
Clayburn Curtis
OnQue Communications, Inc.
Associated Communications &
Research Services, Inc.



Oye Obe
Wireless Nation, Inc.



John O'Brien
Federal Network



Thomas G. Ward
Third Kentucky Cellular Corp.



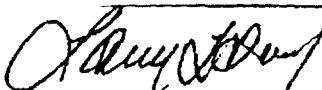
Monuj Bose
New Wave Inc.



Michael Tricarichi
CELLNET



Tim Khayat
Wireless Ventures, Inc.



Larry Day
Cellexis International Inc.



John M. Connolly
CCS



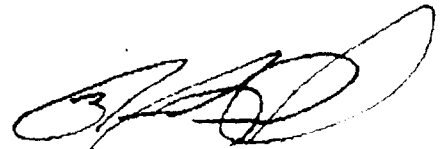
John J. Nestor, Jr.
Nestor Construction



Fred Faulkner, III
MJA Communications Corp.



Etran Chane
Globelink, LLC



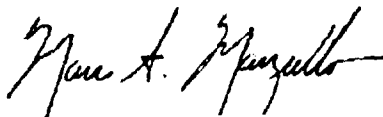
Bradley Harvell
Ausley Harvell Group, Inc.



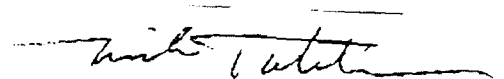
B. Kaplan
XWAY Inc.



Dr. Joseph Shapiro
CELLETRA Ltd.



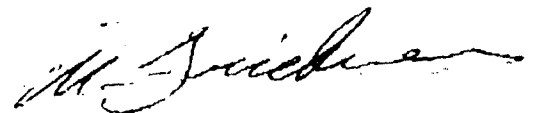
Marc A. Marzullo
URS GREINER, INC.



Michael Toback
Professional Appraisal Inc.



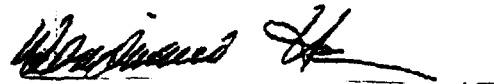
Patrick Mark Key
KEYTECH COMMUNICATIONS, INC.



M. Friedman
RFW Inc.



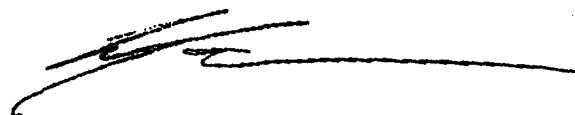
S. G. Kim
HC Electronics America Inc.



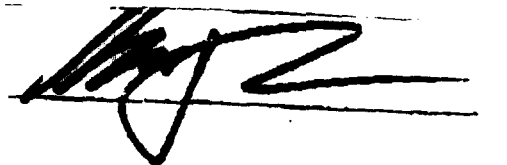
Wendimarie Haven
AirTel Communications



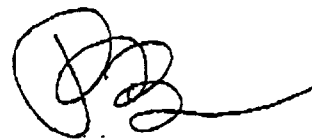
David Fernald
MFRI Inc.



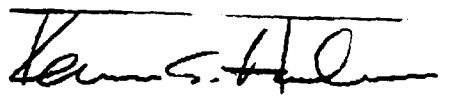
William J. Marraccini
AAT Communications Corporation



Bobby Lim
2001 PCI



Pat Birch
Consolidated Media Systems, Inc.



Kevin S. Hamilton
Prime Matrix



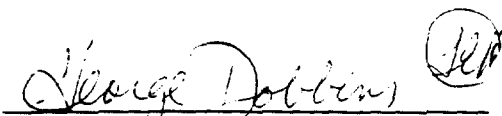
Ron Maxey
Specialty Combined Resources, Inc.



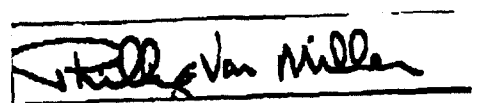
Mike McNelly
Koll Telecommunication Services



Carl Dickerson
Onyx Telecommunications LLC



George Dobbins
Southern Communications Inc.



Phillip Van Miller
United Calling Network Inc.

cc: Dan Phythyon

Western Wireless And U S West Face \$1.2 Million Fines

By SCOTT RITTER
And JOHN SIMONS

Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON—U S West Communications Group Inc. and a unit of Western Wireless Corp. face fines of \$1.2 million apiece for allegedly violating Federal Communications Commission auction rules.

The FCC said yesterday that the two companies violated anticollusion rules during a \$2.5 billion auction of wireless-communications licenses that concluded in January last year. The licenses allow the companies to operate the next generation of cellular phone and data services.

The companies must pay the fines within 30 days or appeal the ruling, the agency said. If paid, the fines would be the largest ever against any company for violation of FCC anticollusion rules.

According to the commission, an executive from U S West, who has since left the company, and an executive of Western PCS BTA I Corp., a Western Wireless unit, allegedly traded voice-mail messages offering details about how their companies planned to bid for communications licenses in the Olympia, Wash., market. FCC rules bar such communications. The contacts, the agency alleged, put other bidders at an unfair disadvantage.

The commission found out about the alleged collusion after U S West uncovered the voice-mail exchanges as part of an internal investigation about another matter. Members of U S West's legal staff came forward and told the FCC about the voice-mail messages.

The FCC said that the companies also violated requirements that bidders abide by and update disclosures filed in advance of an auction.

In a statement, Western PCS said it will challenge the FCC's decision and expects to prevail.

"Western believes its conduct was consistent with FCC rules and regulations pertaining to the auction," the company said, adding that it has cooperated with the investigation, which began in early 1997, and will continue to do so. Western Wireless is based in Issaquah, Wash.

The alleged violations took place in the auction for licenses in the so-called D, E and F blocks.

A spokesman for U S West, Englewood, Colo., said the case was an isolated incident involving a single employee, who was later fired. The company reported the illicit communications to the FCC shortly after executives became aware of them.

"We strongly support [the FCC's] auction process and have zero tolerance for any departure from those rules," said Jerry Brown, the spokesman. "This case involved a single employee acting on his own. We dismissed him within a week of learning that the communication had taken place and we self-reported to the FCC."